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RUEATRS/DEPT OF TREASURY WASHDC  
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RUEAWJA/DEPT OF JUSTICE WASHDC  
RHEBAAA/DEPT OF ENERGY WASHDC

UNCLAS SECTION 01 OF 02 ABUJA 000324

SIPDIS

SENSITIVE BUT UNCLASSIFIED

SIPDIS

STATE PASS TO USTR FOR AGAMA  
TREASURY FOR PETERS AND HALL  
USDOC FOR 3317/ITA/OA/KBURRESS  
USDOC FOR 3130/USFC/OIO/ANESA/DHARRIS  
DOJ FOR MKOUAME  
DOE FOR CGAY AND GPERSON

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TAGS: [ETRD](#) [KIPR](#) [PGOV](#) [PREL](#) [NI](#)

SUBJECT: 2008 SPECIAL 301 REVIEW - NIGERIA

REF: STATE 9475

SENSITIVE BUT UNCLASSIFIED--PLEASE HANDLE ACCORDINGLY

11. (SBU) Intro and Summary: The Government of Nigeria (GON), Nigerian industry and U.S industry recognize the serious Intellectual Property Rights (IPR) problems in Nigeria. There have been some successes in IP enforcement; however, convictions are rare owing to long and tortuous judicial processes which discourage rights owners from seeking redress in court. Nigeria is a member of the World Intellectual Property Organization (WIPO), a party to the Universal Copyright Convention (UCC), the Berne Convention, and the Paris Convention for the Protection of Industrial Property, and has signed the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. Legislation pending in the National Assembly is intended to establish a legal framework for an IPR system that complies with WTO obligations, though current law, especially with regards to copyrights, provides a solid basis for enforcing copyrights and combating piracy. GON officials responsible for IPR issues are open to cooperation and collaboration with the U.S. and concerned industries; however, the GON IP agencies are not well funded and have not yet worked out smooth coordinative mechanisms. This message identifies steps the GON could take to avoid being designated in 2008. Post recommends an approach focused on continued cooperation rather than public designation. End Intro and Summary.

12. (SBU) Optical disc piracy, software piracy, and counterfeit pharmaceuticals are problems in Nigeria. The Nigerian and American recording industries have raised serious concerns about optical disc replicating plants mostly owned by Southeast Asians that are located in the country. In an effort to combat optical disc piracy, the GON enacted the Copyright (Optical Disc Plants) Regulations in December 12006. The regulations prescribe a registration process for all optical disc replicating and duplicating plants in Nigeria; prescribe the use of personal identification numbers and source identification codes; and make it mandatory for every plant to maintain a register for all works produced by them showing the name of the author, title of work, year of production, and quantity of work produced. Though the Nigerian Copyright Commission (NCC) has raided and sealed up some optical disc replicating plants, no convictions have been obtained; in one case, evidence was destroyed at a public "anti-piracy" event and thus could not be used in court. Some plants produce both legal and pirated disks from the same machines. Team Nigeria Law Enforcement Working Group plans to meet with the NCC in March to explore ways forward.

¶3. (U) There has been tremendous success in the fight against counterfeit pharmaceuticals. The National Agency for Food and Drug Administration and Control (NAFDAC) is responsible for regulating drugs and food. NAFDAC has been able to reduce the number of counterfeit pharmaceuticals consumed in Nigeria through conducting raids in various markets nationwide, apprehending counterfeit pharmaceutical imports at the borders, and closing down factories manufacturing sub-standard pharmaceuticals. Though some people complain that NAFDAC is high-handed, the authorities would prefer to curtail the hazards posed by counterfeit and sub-standard pharmaceuticals, thereby saving lives.

¶4. (U) Software piracy is a serious problem, though companies such as Microsoft in conjunction with the NCC have been able to ensure that some high profile violators such as banks obtain the required software license. Though the use of unlicensed software is rampant, the NCC advises that the rights holder makes a formal complaint before it can conduct a raid in the premises of the software pirate.

¶5. (U) The GON IP agencies often complain about low funding from the national budget. This problem is not only confined to IPR agencies, however. Almost all GON agencies are not properly funded. The GON agencies that receive good funding are the big spending ministries such as defense and works (road construction). The NCC has requested additional funding in the 2008 Budget awaiting passage by the National Assembly.

¶6. (U) GON officials responsible for IP admit that there are problems related to IP enforcement especially in the area of building capacity. The United States Patents and Trademarks Office, in collaboration with the U.S. Department of Justice and the U.S. Department of Commerce's Commercial Law Development Program (CLDP),

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continues to provide training to Nigerian IP officials and Judges. The training has improved the way the IP officials do their work according to GON contacts. The January 30 - February 1, 2008 CLDP training for Nigerian Judges was done in coordination with National Judicial Institute and the Intellectual Property Law Association of Nigeria (IPLAN), with the Chief Justice of the Federal High Court present at the training, likewise Justice Niki Tobi, Justice of the Supreme Court of Nigeria, representing the Chief Justice of the Federation.

¶7. (SBU) Post agrees that IP enforcement is weak. This problem is not confined to IPR issues, however. In virtually every field of legal and criminal activity, enforcement is very weak. Even in high profile, high priority areas for the GON such as anti-corruption efforts and efforts to combat advance fee fraud popularly called 419 or areas where there is intense international pressure and scrutiny such as drug trafficking, enforcement continues to be limited, slow and ineffective, reflecting the very low capacity of Nigerian law enforcement institutions. This is a systemic problem that will not yield to quick fixes.

¶8. (SBU) Although post does not dispute that software, print and particularly optical media piracy is a serious and growing problem in Nigeria, post is concerned that placing Nigeria on the 301 Watch List could be counterproductive to our overall and IPR goals. We would note the GON is aware of the problem, is taking steps to address the problem, and the attitude of GON officials responsible for IPR issues is open and responsive to U.S. messages on the issue. Recent IP trainings conducted in Nigeria by DOC's CLDP, DOJ, and USPTO are part and parcel of a strategic approach towards building a fruitful and lasting relationship which will eventually assist us in achieving our IPR goals. Placing Nigeria on the Watch List risks turning a cordial, cooperative relationship into one that is more adversarial and defensive, and ultimately less productive.

¶9. (SBU) The timing in particular of this year's review is problematic. The result of the last presidential election is being challenged and the outcome could be known in the coming weeks. Though the 2007 elections were flawed, the USG sees Nigeria as a partner that needs to be encouraged on its path of reform. Embassy

continues to engage the host government on a variety of issues and continues to receive a lot of cooperation from GON officials even at the highest levels. There is a growing recognition of the need to construct a robust, progressive, and enduring relationship between our two countries.

¶10. (SBU) For the reasons given above, post would not recommend putting Nigeria on the 301 Watch List for 2008, the admitted problems with IPR enforcement notwithstanding.

¶11. (SBU) At the same time, we need to assure U.S. and Nigerian industry--and make clear to our GON counterparts--that we are not giving Nigeria a "free pass." While we do not recommend designation, at the same time, we believe the GON needs to take at least one of the following steps to stay off "The List" in 2008:  
--Increased funding for NCC and clear plan to use it, especially towards enforcement;  
--Raids of illegal disc plants, with attention on proper evidence collection during raids;  
--A conviction and/or plant shut down;  
--Dedicated NCC enforcement unit, led by a law enforcement professional; stronger working relationship between the NCC and the EFCC; or  
--Other concrete bilateral cooperation on enforcement, whether at the federal or state level,.

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